

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY LEON JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**CASE NO. 1:03-CR-5053 AWI
(Civil Case 1:16cv1946 AWI)**

**ORDER CLOSING CASE AND
DENYING PETITION AS MOOT IN
LIGHT OF VOLUNTARY DISMISSAL**

(Doc. Nos. 125, 129)

This is a petition for relief from sentence under 28 U.S.C. § 2255. The petition is based on *Johnson v. United States*, 135 S.Ct. 2551 (2015)'s potential application to Sentencing Guideline 4B1.2(a). See Doc. No. 125. The Court had stayed this matter pending resolution by Supreme Court of *Beckles v. United States* (Supreme Court No. 15-8544). See Doc. No. 126.

On March 6, 2017, the Supreme Court issued its decision in *Beckles* and held that the advisory Sentencing Guidelines are not subject to vagueness challenges under the Due Process Clause. Beckles v. United States, 197 L.Ed. 2d 145 (2017).

On March 8, 2017, the Court lifted the stay in this matter and granted Petitioner 30 days in which to respond to *Beckles*. See Doc. No. 128.

On March 24, 2017, Petitioner filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). See Doc. No. 129.

Courts have applied Rule 41(a) to proceedings under § 2255. See Jackson v. United States, 245 F. App'x 258, 259-60 (4th Cir. 2007); United States v. Jones, 2010 U.S. Dist. LEXIS 68593, *1-*4 (E.D. Mich. June 21, 2010); see also Ford v. United States, 2016 U.S. Dist. LEXIS 115055, *8-*9 (C.D. Cal. Aug. 26, 2016) (providing petitioner with the option of dismissal under

1 Rule 41(a)); Ray v. Davis, 2015 U.S. Dist. LEXIS 139296, *2-*3 (E.D. Cal. Oct. 13, 2015)
2 (applying Rule 41(a) in a petition under 28 U.S.C. § 2254). A properly filed Rule 41(a)(1)
3 dismissal is a self-executing order and automatically terminates the case. See Fed. R. Civ. P.
4 41(a)(1); Duke Energy Trading & Mktg., LLC v. Davis, 267 F.3d 1042, 1048-49 (9th Cir. 2001);
5 Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1077-78 (9th Cir. 1999).

6 Here, there has been no response filed by the government in this matter. Therefore,
7 because Petitioner has filed a properly signed notice of voluntary dismissal, this matter has
8 terminated. See Fed. R. Civ. P. 41(a)(1)(A)(i); Jackson, 245 Fed. Appex. at 259-60; Duke Energy,
9 267 F.3d at 1048-49; Commercial Space, 193 F.3d at 1077-78.

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11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Clerk shall CLOSE this matter in light of Petitioner's Rule 41(a)(1) voluntary
13 dismissal; and
14 2. For administrative purposes, Petitioner's 28 U.S.C. § 2255 petition to vacate (Doc. No.
15 125) is DENIED as moot in light of Petitioner's voluntary dismissal.

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17 IT IS SO ORDERED.

18 Dated: March 27, 2017



19 SENIOR DISTRICT JUDGE
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